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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/886,074	06/18/2001	Stephen A. Yencho	032405-053	6914

33109 7590 11/01/2004

CARDICA, INC.  
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REDWOOD CITY, CA 94063

EXAMINER
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BAXTER, JESSICA R

ART UNIT	PAPER NUMBER
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3731

DATE MAILED: 11/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/886,074

Applicant(s)

YENCHO ET AL.

Examiner

Jessica R Baxter

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 11 August 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 30-69 is/are pending in the application.
- 4a) Of the above claim(s) 30-35, 43-55, 68 and 69 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 36-42 and 60-64 is/are allowed.
- 6) ☐ Claim(s) 56-59, 65 and 66 is/are rejected.
- 7) ☒ Claim(s) 67 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Continued Examination Under 37 CFR 1.114*

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114.

Applicant's submission filed on August 11, 2004 has been entered.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 56 rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,293,955 to Houser et al.

Houser discloses a tool comprising a vessel penetrating member without a passage therethrough and a tool adapted to deliver a one-piece anastomosis system (FIG. 17).

4. Claims 65 and 66 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 5,833,698 to Hinchcliffe et al.

Hinchcliffe discloses a method comprising the steps of providing an anastomosis device, receiving the device on an applicator including a first tube and a second tube, connecting a graft vessel to the anastomosis device, an end of the graft vessel passing out a side hole of at least one of the first and second tubes (FIG. 28); and deploying the anastomosis device by moving the first and second tubes (Column 11 lines 1-17).

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 56-59 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,695,504 to Gifford, III et al. in view of Houser et al. '955.

Gifford discloses a one-piece anastomosis delivery system comprising concentric tubes movable with respect to each other (FIGS. 9-14). Gifford teaches that any appropriate tool may be used to make a hole in the vessel (Column 23 lines 62-65). Houser teaches a vessel-penetrating punch to make a whole in the vessel without making a prior incision (FIGS. 17 and 18). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the device of Gifford with the puncturing instrument of Houser in order to make a hole in the artery without making a prior incision.

### *Allowable Subject Matter*

7. Claims 36-42 and 60-64 are allowed.
8. Claim 67 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
9. The following is a statement of reasons for the indication of allowable subject matter: The prior art of record does not teach or disclose the use of an expandable one-piece anastomosis device with a delivery device having a side hole. The prior art of record does not teach or disclose a method for performing anastomosis comprising maintaining the anastomosis device applicator and vessel penetrating member outside of the lumen of the graft vessel during the steps of receiving, connecting, penetrating, advancing, and deploying.

### *Response to Arguments*

10. Applicant's arguments with respect to claims 56-59, 65 and 66 are have been considered but are moot in view of the new ground(s) of rejection.

### *Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jessica R Baxter whose telephone number is 571-272-4691. The examiner can normally be reached on M-F 8:30AM - 5:00PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan T Nguyen can be reached on 571-272-4963. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jessica R Baxter  
Examiner  
Art Unit 3731

*JRB*  
jrb

*Julian W. Woo*

**JULIAN W. WOO  
PRIMARY EXAMINER**